Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
29 May 2015
English
Original: Spanish

Committee against Torture

Concluding observations on the fifth periodic report of Colombia*

1. The Committee against Torture considered the fifth periodic report of Colombia (CAT/C/COL/5) at its 1306th and 1309th meetings (CAT/C/SR.1306 and 1309), held on 30 April and 1 May 2015, and adopted the following concluding observations at its 1323rd meeting, held on 12 May 2015.

Introduction

2. The Committee wishes to thank the State party for having agreed to use the optional reporting procedure, which allows for a more focused dialogue between the State party and the Committee.

3. The Committee appreciates the dialogue that was held with the State party's delegation and the additional information provided during its consideration of the report.

Positive aspects

4. The Committee notes with satisfaction that, since its consideration of the fourth periodic report, the State party has ratified or acceded to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities (on 10 May 2011);

(b) The International Convention for the Protection of All Persons from Enforced Disappearance (on 11 July 2012).

5. The Committee also notes with satisfaction that the State party has adopted the following legislative measures on matters related to the Convention:

(a) The promulgation of the Victims and Land Restitution Act (Act No. 1448 of 10 June 2011), which provides for support, assistance and full redress for victims of the internal armed conflict. This law introduces an array of measures designed to ensure that victims of the armed conflict are able to exercise their rights to truth, justice, redress and non-repetition;

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

GE.15-08413 (E) 160615 170615
1508413

Please recycle

(b) The promulgation of Act No. 1719 of 18 June 2014, which deals with access to justice for victims of sexual violence, especially in the context of the armed conflict.

6. The Committee recognizes the efforts that the State party is making to reach an agreement within the framework of the current peace process, which was set in motion in August 2012. It encourages the State party to pursue those negotiations and welcomes the fact that victims' rights are one of the main items on the agenda.

Principal subjects of concern and recommendations

The crime of torture

7. The Committee feels that the definition of the offence of torture as set forth in articles 137 and 178 of the Criminal Code does not encompass acts of torture committed for the purpose of intimidating or coercing a third party. It also wishes to reiterate the concern that it has expressed earlier (CAT/C/COL/CO/4, para. 10) about the tendency to assimilate the crime of torture to other less serious criminal offences and to take the mistaken approach of subsuming acts of torture under other related offences (arts. 1 and 4).

The State party should amend the Criminal Code so that the definition of the crime of torture encompasses all the elements listed in article 1 of the Convention, including, in particular, acts of torture committed to intimidate or coerce a third person. The State party should also ensure that offences are classified correctly and that persons committing the crime of torture are punished in a manner that is commensurate with the gravity of their acts. The Committee recommends that the State party ensure that the offence of torture is not subject to any statute of limitations in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators of torture.

Fundamental legal safeguards

8. The Committee observes with concern that article 303 (the rights of arrested persons) of the Code of Criminal Procedure does not establish the right to be examined by an independent physician. It also believes that the wording of paragraph 4 of that article lends itself to an overly broad interpretation inasmuch as it states that the arrested person should receive the assistance of counsel "as soon as possible", which could open the way for abuses (art. 2).

The State party should provide de jure and de facto guarantees that persons who are deprived of their liberty have the benefit of all fundamental legal safeguards from the moment that they are arrested. These safeguards include, in particular, the right to have the assistance of counsel without delay and the right to request a medical examination by a physician of one's choice, regardless of any medical examination that may be conducted at the request of the authorities.

Mass arrests for purposes of recruitment

9. The Committee wishes to express its satisfaction with the content and scope of Constitutional Court decision No. C-879 of 22 November 2011, but it is concerned by reports that military operations continue to be conducted in which men of military age are taken into custody indiscriminately in order to identify those who have not completed their mandatory military service. The Committee is also concerned by reports that persons held in custody during these operations have been subjected to acts of aggression (arts. 2 and 16).

The State party should ensure that military personnel act in strict accordance with the law, as stated in decision No. C-879 of the Constitutional Court.

Extrajudicial killings, enforced disappearances and other grave human rights violations

10. The Committee is concerned by the persistence of grave human rights violations, including extrajudicial killings and enforced disappearances, in the State party. It notes, however, that, in his latest report on the human rights situation in Colombia, the United Nations High Commissioner for Human Rights said that the Commission's office in Colombia had not documented any further cases of "false positives" in 2014 but did document cases in which the armed forces had attempted to portray victims of arbitrary killings as enemy combat casualties or had rearranged crime scenes to make it appear as though the killings had been in self-defence (see A/HRC/28/3/Add.3, para. 43). While it takes note of information provided by the State party's delegation about the prosecution of members of security forces charged with having committed extrajudicial killings, including cases of "false positives", the Committee finds it regrettable that it has not received information concerning criminal trials or convictions for the offence of enforced disappearance (arts. 2, 12 and 16).

The State party should ensure that extrajudicial killings, enforced disappearances and other grave human rights violations are investigated promptly, effectively and impartially, that suspected perpetrators stand trial, that those who are found guilty are punished accordingly and that all victims are provided with effective redress, including adequate compensation.

The military justice system

11. The Committee appreciates the explanations offered by the State party's delegation regarding the fact that military courts are barred from trying civilians and its description of the content of a number of pending bills that would reform the military justice system. However, it considers that, if the amendments proposed by the Government were to be adopted, military courts would have jurisdiction over cases involving acts committed by military personnel that could be classified as any of the different categories of homicide or mistreatment of civilians (art. 2, para. 1).

The State party should ensure that grave human rights violations and other abuses committed against civilians by military personnel do not fall within the jurisdiction of military courts.

Paramilitaries and groups that have formed since the demobilization

12. The Committee takes note with concern of the shortcomings exhibited by the special paramilitary demobilization process being pursued under the terms of Justice and Peace Act No. 975/2005 as amended by Act No. 1592/2012 and observes that, although this process has helped in some way to bring out the truth, it appears to have allowed many crimes committed by members of paramilitary groups to go unpunished, thereby denying their victims' right to full redress. The explanations offered by the delegation notwithstanding, and even though an access plan has been agreed upon with the United States Department of Justice, the Committee believes that the extradition of the chief commanders of the Autodefensas Unidas de Colombia (AUC) to stand trial for drug trafficking may have had a negative impact on the investigations being conducted as part of the justice and peace process. The Committee is also concerned about the serious abuses — including enforced disappearances, murders, sexual violence, the recruitment of minors, threats and forced displacements — committed against civilians by the armed groups that were formed in the wake of the demobilization of paramilitary organizations. It is especially concerned by reports indicating that these groups are responsible for the numerous kidnappings and murders that have occurred in the last few years in the city of Buenaventura, in the Valle del Cauca (arts. 2, 4, 12, 14 and 16).

The Committee reiterates that amnesties for the crime of torture are incompatible with the obligations of States parties under, inter alia, article 14 of the Convention. In this regard, the Committee refers to paragraph 5 of its general comment No. 2 (2007), on the implementation of article 2 by States parties, and to paragraph 41 of its general comment No. 3 (2012), on the implementation of article 14 by States parties. The State party should also make sure that the extradition of members of AUC does not impede investigations into abuses committed by paramilitary groups in Colombia. In addition, the State party should take steps, as a matter of urgency, to put an end to the criminal activities of members of illegal armed groups that were formed following the demobilization of paramilitary organizations.

Gender-based violence

13. While welcoming the steps taken to prevent the various forms of violence against women and to punish the perpetrators of such acts, the Committee is concerned by the fact that the large number of complaints concerning gender-based violence that have been filed have led to so few convictions for crimes involving gender-based violence. According to the statistics provided by the State party, of the 266,552 complaints of offences involving gender-based violence that were filed between 2010 and 2013, only 10,671 convictions for such offences were handed down (arts. 2 and 16).

The Committee urges the State party to redouble its efforts to combat all forms of gender-based violence and to ensure that all complaints are thoroughly investigated and that suspected offenders are prosecuted and, if convicted, punished appropriately. The State party should also ensure that victims receive full redress for the harm suffered, including fair and adequate compensation and the fullest rehabilitation possible. Public awareness-raising campaigns concerning violence against women should also be expanded.

Sexual violence in the context of the armed conflict

14. The Committee recognizes the efforts made by the State party to combat sexual violence perpetrated by armed groups — including the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) and the Ejército de Liberación Nacional (ELN) — and by members of security forces in the context of the armed conflict. Nonetheless, the Committee remains concerned about the high levels of sexual violence in the country, much of which is directed at women and girls, many of whom are internally displaced. The Committee is also concerned by the fact that victims of sexual violence face formidable obstacles in their efforts to seek justice, and this is particularly true in the case of indigenous women and Colombian women of African descent. The Committee is, in addition, concerned by the stigmatization associated with this type of violence (arts. 2 and 16).

The State party should redouble its efforts to ensure that victims of sexual violence receive redress and should adopt specific measures that will put an end to the culture of silence and stigma that surrounds this type of violence. In this regard, the Committee draws the State party's attention to paragraph 33 of its general comment No. 3 (2012).

Refugees and non-refoulement

15. Having examined the changes in asylum procedures introduced under Decree No. 2840 of 6 December 2013, the Committee observes that this decree provides that migration authorities may not accept asylum applications from persons who are in transit at border checkpoints. The Committee is concerned by the fact that the State party may have acted in breach of the principle of non-refoulement in respect of Lorent Saleh and Gerando Carrero,

both Venezuelan nationals, in 2014. The Committee takes note of the fact that the State party has asserted that, in accordance with international instruments, the principle of non-refoulement does not apply to refugees who are deemed, on the basis of substantial grounds, to constitute a security threat to the country in which they are located. In that regard, the Committee recalls that article 3 of the Convention affords absolute protection to all persons in the territory of the State party, regardless of the nature of that person and regardless of the danger that he or she may pose to society (see CAT/C/52/D/475/2011 and Corr.1, para. 10.4, and CAT/C/48/D/444/2010, para. 13.7). Finally, the Committee finds it regrettable that it has not received the information it requested regarding the acceptance of diplomatic guarantees as a safeguard against torture or ill-treatment (art. 3).

The State party should:

(a) Rescind or amend provisions that bar persons in transit at border checkpoints from submitting asylum applications to migration authorities;

(b) Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal, foreseeable risk of being subjected to torture;

(c) Refrain from requesting or accepting diplomatic assurances when there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture.

Excessive use of force

16. The Committee is concerned at the number of persons who have been shot to death or wounded by gunshot during confrontations between demonstrators and security forces in the course of social protests. It finds it regrettable that the State party has not provided detailed information on the investigations now under way in this connection. The Committee is also concerned by allegations of police mistreatment of demonstrators (arts. 2, 12, 13 and 16).

The State party should ensure that all complaints regarding the excessive use of force by law enforcement officers or military personnel are investigated in a prompt, effective and impartial manner. It should also ensure that persons suspected of committing such acts are brought to trial and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts. Victims or their families should also receive appropriate redress. In addition, the State party should train all of its law enforcement officers in the proper use of force and should regulate the use of firearms by its security forces in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

Prison conditions

17. While taking note of the State party's efforts to expand the capacity and improve conditions in the country's prisons, the Committee is concerned by the increased overcrowding of these facilities, which has led the Constitutional Court to characterize the situation as an "unconstitutional state of affairs" (Decision No. T-388/13 of 28 June 2013). The Committee is concerned by reports that the wings for women inmates located in men's prisons lack the necessary infrastructure and services for women prisoners. The Committee is concerned by the fact that health-care services in the country's prisons display serious shortcomings, as has been acknowledged by the State party's delegation (arts. 2, 11 and 16).

The State party should ensure that prison conditions are in line with international standards. In particular, the State party should:

(a) Allocate, without delay, the resources needed to provide prisoners with proper medical and health care;

(b) Adopt effective measures, as a matter of urgency, to reduce prison occupancy rates, primarily by making use of alternatives to deprivation of liberty in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

Solitary confinement

18. The Committee takes note with concern of reports indicating that inmates suffering from mental illnesses have been placed in isolation cells (special treatment units) and that placement in punishment cells has been used as a disciplinary measure in youth detention centres (arts. 11 and 16).

The State party should:

(a) Ensure that solitary confinement is used only as a last resort, for as brief a period as possible and under strict judicial oversight and controls;

(b) Prohibit the solitary confinement of inmates with mental illnesses and minors in conflict with the law;

(c) Establish a system for the supervision of the use of solitary confinement.

Deaths of persons in custody

19. The Committee is concerned about the large number of deaths that have occurred while persons were being held in detention centres and finds it regrettable that it has not received information on the causes of death in these cases or on the findings of the investigations that have been carried out (arts. 2, 11 and 16).

The State party should, without delay, undertake thorough, impartial investigations into all cases in which persons have died while in custody and, where appropriate, carry out autopsies. The State party should determine whether law enforcement or prison officials are in any way responsible for such deaths and, if so, punish the guilty parties and provide the victims' family members with adequate redress.

Inspection of detention centres

20. The Committee welcomes the establishment of the Prison Conditions Oversight Commission and the active presence maintained by the Office of the Ombudsman and the Office of the Counsel-General in correctional facilities, but it is concerned by reports indicating that the Ombudsman's recommendations are not being duly acted upon. In addition, the Committee has observed that no fully independent agency is responsible for inspecting all places of detention, including police stations, youth detention centres and psychiatric hospitals (art. 2).

The State party should ensure that all places of detention are subject to independent inspections on a regular basis; these inspections should incorporate the oversight activities carried out by non-governmental organizations. The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Complaint and investigation mechanisms and impunity

21. The Committee is concerned by reports indicating that complaints of torture and ill-treatment are rarely investigated, which creates a climate of impunity. In view of these reports, the Committee is concerned by the fact that the State party has not furnished specific information on the number of complaints of torture or ill-treatment or on the corresponding investigations, trials and convictions during the reporting period. Given the lack of this information, the Committee is unable to evaluate the actions of the State party in the light of article 12 of the Convention. Furthermore, the Committee finds it regrettable that there is still no specific, independent, effective mechanism for the receipt of complaints of torture or ill-treatment in detention centres or for the investigation of those complaints (arts. 2, 12, 13 and 16).

The State party should:

(a) Ensure that all complaints of torture or ill-treatment are promptly investigated in an impartial manner by an independent body, that there is no institutional or hierarchical relationship between that body's investigators and suspected perpetrators of such acts and that the suspected perpetrators are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts;

(b) Ensure that the authorities undertake investigations on their own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;

(c) Establish a centralized registry for records on cases of torture and ill-treatment;

(d) Regularly evaluate the effectiveness of the complaints systems made available to persons deprived of their liberty.

Redress

22. According to the information supplied by the State party concerning avenues for the provision of redress for acts of torture under Decree No. 1290 of 2008 and Act No. 1448 of 2011, as of 30 December 2013 only 7 of the 9,474 recognized victims of torture had actually received compensation. Bearing in mind the wide array of measures of redress provided for in Act No. 1448, the Committee finds it regrettable that it has not received detailed information on the implementation of programmes to provide redress, including treatment for trauma and other forms of rehabilitation, to victims of torture (art. 14).

The Committee urges the State party to provide all victims of torture or ill-treatment with full redress for the harm suffered, which should include fair and adequate compensation and as full rehabilitation as possible. To this end, it should ensure that:

(a) Rehabilitation programmes and services are available to all victims, with no discrimination whatsoever being present in this respect;

(b) Rehabilitation services are comprehensive and include medical and psychological treatment and social services;

(c) Forms of reparation and restitution are determined on the basis of the nature and circumstances of each individual case so that the redress provided is geared to the particular needs of the victim and is commensurate with the gravity of the acts in question.

The Committee draws the State party's attention to its general comment No. 3 (2012), particularly paragraphs 6, 11 through 15, 32 and 39, which provide a detailed description of the nature and scope of States parties' obligation to provide victims of torture with redress and the means for full rehabilitation.

Confessions obtained under duress

23. While taking note of the guarantees set forth in the Constitution, in other laws and in jurisprudence regarding evidence obtained under torture or ill-treatment, the Committee is concerned by the fact that the State party has not provided it with recent examples of instances in which the courts have dismissed cases because of the submission of evidence or testimony obtained under torture or ill-treatment (art. 15).

The State party should take effective steps to ensure that confessions obtained under torture or ill-treatment are ruled inadmissible. It should also expand its targeted training programmes on the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for judges, prosecutors, forensic physicians and all other medical personnel who deal with prisoners.

Training

24. The Committee applauds the State party's efforts to provide human rights training and training dealing with the provisions of the Convention. It is regrettable, however, that the Committee has not received information about the development of mechanisms for assessing the effectiveness of training programmes for law enforcement officers and military personnel as a means of reducing the number of cases of torture and ill-treatment (art. 10).

The State party should:

(a) Continue to conduct mandatory training programmes in order to ensure that all civil servants fully understand the provisions of the Convention, are well informed about the offences that will not be tolerated and that will be investigated and are fully aware that the perpetrators of such offences will be prosecuted;

(b) Establish a methodology for evaluating the effectiveness of training programmes as a means of reducing the number of cases of torture and ill-treatment.

Independence of the judiciary

25. The Committee condemns the murder of Judge Gloria Constanza Gaona Rangel on 22 March 2011 in Saravena, Arauca, and decries the threats and acts of intimidation directed at judges and prosecutors during the reporting period. The Committee takes note of the information provided by the delegation which indicates that 144 risk assessments were conducted in 2014 of the security situation with respect to justice officials involved in the trials of persons charged with human rights violations and in land restitution processes. The Committee finds it regrettable that it did not receive sufficient information during its dialogue with the delegation of the State party about the measures adopted to ensure the safety and independence of the staff of the Prosecution Service (art. 2).

The State party should protect judges and prosecutors from threats and attacks and should ensure the immediate, thorough investigation of such acts and the prosecution and punishment of the guilty parties.

Human rights defenders and other representatives of civil society who are at risk

26. The Committee condemns the killings of numerous human rights defenders, trade unionists and journalists during the reporting period. It is concerned by reports of attacks, death threats and other forms of intimidation directed at community leaders; teachers; indigenous and Afro-Colombian leaders; lesbian, gay, bisexual and transsexual activists; representatives of displaced persons; and activists involved in land restitution processes. While taking note of the measures adopted by the State party to prevent these types of attacks and protect the life and ensure the physical safety of human rights defenders and other representatives of civil society, the Committee finds it regrettable that most of the investigations into such acts that have been opened have not produced any results. The Committee is also concerned by reports of public statements made by senior government officials and military leaders in which they have accused human rights defenders of collusion with armed groups, thereby putting them in harm's way. Finally, the Committee welcomes the conviction of senior officials for abuses committed by the Colombian intelligence service, including, in particular, illegal spying on human rights defenders, journalists, politicians and judges (arts. 2, 12, 13 and 16).

In the light of its preceding final conclusions (CAT/C/COL/CO/4, para. 23), the Committee urges the State party to:

(a) Ensure that journalists, trade unionists, human rights defenders and other representatives of civil society are shielded from acts of intimidation and violence to which they may be exposed because of their activities;

(b) Ensure that all incidents involving threats or aggression directed at journalists, human rights defenders, trade unionists, community leaders and other representatives of civil society are promptly investigated in an impartial manner.

Violence committed on grounds of sexual orientation or gender identity

27. The Committee is concerned by reports of police brutality directed at women transsexuals and other persons because of their sexual orientation or gender identity. The Committee is also concerned by reports that homophobic crimes, particularly in the form of sexual assault and murders of gay men and transsexual women, are frequent in the State party (arts. 2, 12, 13 and 16).

The State party should:

(a) Safeguard the physical integrity of gays, lesbians, bisexuals and transgender persons who are in police custody and ensure that they are treated with dignity;

(b) Ensure that murders and assaults motivated by a person's sexual orientation or gender identity are investigated and that the persons responsible are brought to justice;

(c) Provide mandatory training to law enforcement officers on the prosecution of cases involving the commission of acts of violence motivated by a person's sexual orientation or gender identity.

Follow-up

28. The Committee requests the State party to provide information by 15 May 2016 at the latest on the action taken pursuant to the recommendations made herein concerning: (a) the excessive use of force by law enforcement and military personnel (para. 16); (b) prison conditions (para. 17); and (c) redress for victims of torture and ill-treatment (para. 22).

Other matters

29. The Committee recommends that the State party consider the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

30. The State party is requested to ensure that its report to the Committee and these concluding observations are widely disseminated in the appropriate languages through official websites, the media and non-governmental organizations.

31. The State party is invited to submit its sixth periodic report by 15 May 2019 at the latest. To that end, the Committee will transmit a list of issues prior to reporting to the State party in due course.